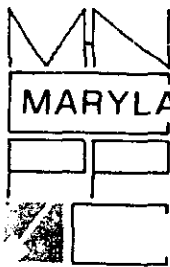


Office of Legislative Oversight

Item 10 (c)

As of October, 2004, Site Plan Enforcement agreements are no longer required by MNCPPC. (See, p. 2 of attached memo from Legal to DRC dated September 1, 2004). All the issues that were previously addressed in the Site Plan Enforcement Agreement are now incorporated as conditions in the Planning Board Staff Report. These conditions, in turn, become part of the official Planning Board opinion.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760



OFFICE OF
THE GENERAL COUNSEL

(301) 495-4646
FAX (301) 495-2173

September 1, 2004

I. **MEMORANDUM**

TO: Development Review Division Staff

FR: Michele Rosenfeld, Associate General Counsel *MR*

RE: Revised Homeowners' Association Document Review Process and
Elimination of Site Plan Review Agreements and Revised Development Program
Approval Process

I. **Introduction**

Legal staff has, over the course of the past year, worked to streamline its post-approval review procedures. It has been successful in two instances, i.e., in the standardization of the requisite homeowner's association document review, and in the elimination of the site plan enforcement agreement. These changes will require new conditions of approval, and slight modification of the post-approval review process. This memo discusses both procedures.

II. **Homeowner's Association Document Review**

The Zoning Ordinance requires, as part of the site plan review process, for this agency to ensure that applicants provide "Documents indicating in detail the manner in which any land intended for common or quasi-public use, but not proposed to be in public ownership, will be held, owned and maintained in perpetuity for the indicated purposes." Montgomery County Code § 59-D-3.24. This historically has been done through an extensive review of the homeowner's association documents provided by applicants, negotiation of specific language with applicant's attorneys, and an assumption that those documents were recorded in the form approved by legal staff.

This process has been revised as follows:

1. Legal staff has recorded in the land records a standardized (and simplified) covenant (similar in concept to the pre-recorded Forest Conservation Law Easement). (See Attachment One.) The title of this document is the "Common Open Space Covenant With The Maryland-National Capital Park and Planning Commission."
2. The following **new condition of approval should be included in any site plan application with common areas:**

Record plat to reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to Commission staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.

3. Prior to release of final building permit, applicant must submit:
 - a. Copy of Recorded Homeowner's Association or Condominium Docs that incorporate by reference the Covenant by referencing Liber 28045 Folio 578; or
 - b. Letter from Applicant, with receipt from land records office, affirming that their HOA or Condo Docs have been recorded with that reference, attaching a copy of excerpted pages with reference to Liber 28045 Folio 578.

If questions, see Legal staff for approval of verification.

III. Replacement of Site Plan Enforcement Agreement with Condition of Approval

Section 59-D-3.3 of the Montgomery County Zoning Ordinance required an agreement between an applicant for a site plan, and the Planning Board, to ensure that the applicant will "execute all the features of the site plan noted in section 59-D-3.23 in accordance with the development program required in section 59-D-3.23(m)." ("Site Plan Enforcement Agreements). This agreement is also referenced to in other sections of the Code. The District Council adopted this requirement in Zoning Text Amendment No. 80025 on July 21, 1981.

The Site Plan Enforcement Agreements ("SPEA") were required before the Commission had enforcement tools such as stop work orders and fines, to create an enforcement mechanism through judicial recourse if a developer did not conform to the conditions of approval. This vehicle is no longer necessary, because the enforcement tools provided in Chapters 50 and 59 (stop work orders, fines, etc.) are more effective than a court action for a number of reasons. First, they're immediate. Second, they are enforced, when necessary, through the District Court, which is a much quicker venue than Circuit Court. Finally, if enforcement of an SPEA is required, then it must occur through the filing of a breach of contract action in Circuit Court, a lengthy, expensive and highly uncertain process, wherein the form of the contract itself could be contested. As a result, the County Council enacted ZTA 04-06, eliminating the requirement for a SPEA. (Attachment Two.)

Therefore, site plans now should **include a condition of approval that states that "Applicant will build in accordance with Development Program, to be reviewed and approved by staff prior to release of signature set."** This process ensures technical review of, and conformance with, a development program, as contemplated by the Zoning Ordinance.

IV. Conclusion

These revised procedures should streamline the post-approval process, and lessen the amount of paperwork (and paper) that flows through the DRD and legal offices, while retaining (and in the case of the HOA document review enhancing) the agency's regulatory enforcement abilities. I have also attached a draft revised DRD routing sheet for your consideration, to reflect these revised processes.

MMR:cmd

Attachment

cc: Adrian R. Gardner, General Counsel
Charlie Loehr, Director, Department of Park and Planning
Rick Hawthorne, Acting Chief, DRD
Greg Russ, Planning Coordinator, Development Review Division

COMMON OPEN SPACE COVENANT WITH THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

WHEREAS, pursuant to Montgomery County Code Section 59-D-3.24, the Planning Board is required to ensure that land intended for "common or quasi-public use, but not proposed to be held in public ownership, will be held, owned and maintained in perpetuity for the indicated purposes;" and

WHEREAS these common and quasi-common areas are hereinafter referenced as "Common Areas;" and

WHEREAS; this Covenant over Common Areas is recorded in furtherance of Section 59-D-3.24; and

WHEREAS this Covenant, which runs with the land, is supplementary to, and does not purport to amend or modify any requirements associated with common ownership communities required by state or federal law;

THEREFORE;

The above-recitals are incorporated herein by reference

2. Common Areas must include all of the real property depicted as such on any and all final record plat or condominium plat ("Final Plat") and all facilities depicted as such on, and required as conditions of approval in, any applicable project plans, preliminary plans, and/or site plans ("Regulatory Plans") reviewed and approved by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission ("Commission"). Facilities located within Common Areas may include recreational facilities, private roads, stormwater management facilities, and any other required features that are to be constructed on Common Areas pursuant to the Final Plat and Regulatory Plans.
3. Notwithstanding anything in the Homeowners' Association Documents, or Condominium Association Documents, as appropriate (collectively "HOA Documents"), the benefits and restrictions contained in this Covenant supercede any conflicting language in the HOA Documents.
4. All Common Area as shown on any applicable Regulatory Plans shall be deeded and annexed to the Association, in accordance with any applicable phasing schedules in the Regulatory Plans. The applicant who receives Regulatory Plan approval (hereinafter "Developer") reserves the right to seek an amendment to a Regulatory Plan for the purpose of modifying the location or amount of real property comprising the Common Area and for the purpose of modifying the improvements to be constructed on the Common Area, which amendment shall be reviewed by the Commission in accordance with applicable law. Such amendment shall become effective only if approved by the Commission.
5. After substantial completion of the Common Areas, all lot/unit owners have the right to access and make reasonable use of the Common Areas both before and after they are conveyed to the Association with the exception of those areas as may be reasonably and necessarily restricted for access because of construction activities or temporary safety reasons.

N/A

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NO FEE - MNCPPC

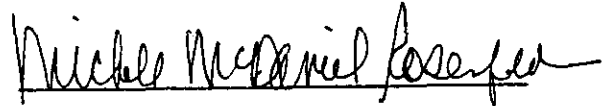
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MOLLY O. RUHL
CLERK'S OFFICE
MONTGOMERY CO. MD

RECORDING FEE 0.00
TOTAL 0.00
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11:50 AM

6. Except with respect to those portions of stormwater management facilities within Common Areas which Montgomery County is obligated to maintain, the Association is obligated to maintain these Common Areas. The Association shall collect, budget, expend and reserve suitable funds to pay for maintenance, major repairs, renovations, and replacements of facilities associated with the Common Areas and to pay the costs associated with this responsibility (including the payment of property taxes). The Association shall maintain the Common Areas and facilities if any, through assessments, and/or special assessments, of its members as defined elsewhere in Association governing documents. These assessments shall include in addition to the costs of maintenance, a sufficient amount as a replacement reserve to fund the renovation and major repair of the common areas and facilities if any, during said common area and facilities projected useful life, or the replacement of the facilities at the end of said projected useful life. The Association shall also collect from its members as part of these assessments, funds sufficient to pay the costs related to common areas and facilities, if any, including, but not limited to insurance and real estate taxes.
7. The Developer shall assign or convey to the Association all warranties, maintenance and inspection information, documents and rights associated with all Common Areas which the Developer is entitled to receive from the installer or manufacturer of such facilities.
8. The Association will monitor compliance with the requirements of any conservation easements and other restrictions imposed on lots and/or the common areas by the Commission and will periodically remind unit owners of these restrictions.
9. The Association has the right to grant easements or rights-of-way over or convey portions of the Common Areas to public or quasi-public agencies to serve necessary public purposes.
10. Rights of the Maryland-National Capital Park and Planning Commission ("The Commission"): Any other provision of the HOA Documents to the contrary notwithstanding, neither the Owners, The Board of Directors nor the Association shall, by act or omission, take any of the following actions without the prior written consent of the Commission, which consent shall not be unreasonably withheld or delayed:
 - a. Make any annexation or additions other than as provided for in the HOA Documents; or
 - b. Abandon, partition, dedicate, subdivide, encumber, sell or transfer any of the Common Areas; provided, however, that the granting of rights-of-way, easements and the like for public utilities or for other purposes consistent with the use of the Common Areas by the Owners shall not be considered a transfer within the meaning of this Section; or
 - c. Abandon or terminate the HOA Documents; or
 - d. Merge or consolidate the Association with any other entity or sell, lease, exchange or otherwise transfer all or substantially all of the assets of the Association to any other entity.

The Commission shall have the right to bring action for any administrative, legal, or equitable relief necessary to enforce the rights and powers granted to the Commission under this Covenant.

This is to certify that the within instrument has been prepared under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.



Michele McDaniel Rosenfeld
Associate General Counsel
The Maryland-National Capital Park and
Planning Commission

AFTER RECORDATION RETURN TO:

Land Acquisition Specialist
M-NCPPC
9500 Brunett Avenue, Room B107
Silver Spring, Maryland 20901

Zoning Text Amendment No: 04-06
 Concerning: Site Plan Enforcement
 Agreements - Elimination
 Draft No. & Date: 1 - 3/15/04
 Introduced: March 23, 2004
 Public Hearing: May 4, 2004; 1:30 PM
 Adopted:
 Effective:
 Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
 SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
 THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
 MONTGOMERY COUNTY, MARYLAND**

By: District Council at the request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- eliminating the site plan agreement requirement

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-7	"PLANNED UNIT DEVELOPMENT ZONES"
Section 59-C-7.2	"Town sector zone"
DIVISION 59-D-3	"SITE PLAN"
Section 59-D-3.3	"Agreement"
DIVISION 59-E-3	"NUMBER OF SPACES REQUIRED"
Section 59-E-3.33	"Credits for specified residential uses"
DIVISION 59-F-10	"AUTHORITY"
Section 59-F-10.2	"Sign Review Board"

EXPLANATION: ***Boldface** indicates a heading or a defined term.*

Underlining indicates text that is added to existing laws by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. Division 59-C-7 is amended as follows:

DIVISION 59-C-7. PLANNED UNIT DEVELOPMENT ZONES.

* * *

59-C-7.2. Town sector zone.

* * *

59-C-7.28 Procedures for application and approval.

* * *

(d) In the implementation of subsections 59-C-7.28(b) and (c), above the Planning Board may waive the substantive requirements of chapter 50 and certain requirements of [a] Article 59-E (including the number of parking spaces described in Section 59-E-3.7) upon a finding that the waiver would allow greater flexibility of development consistent with the purposes of the zone and promote more attractive and more efficient overall planning and design; except that the following may not be waived:

* * *

(2) The following provisions of [d] Division 59-D-3 may not be waived:

* * *

[59-D-3.3, "Agreement."]

* * *

Sec. 2. Division 59-D-3 is amended as follows:

DIVISION 59-D-3. SITE PLAN.

* * *

59-D-3.3 [Agreement] Reserved.

[An agreement shall be signed by the applicant and the planning board's designee requiring the applicant to execute all the features of the site plan noted in section 59-D-3.23 in accordance with the development program required in section 59-D-

3.23(m). The agreement shall contain language stating that the agreement is also binding upon the applicants, successors and assigns.]

* * *

Sec. 3. Division 59-E-3 is amended as follows:

DIVISION 59-E-3. NUMBER OF SPACES REQUIRED.

* * *

59-E-3.33. Credits for specified residential uses.

* * *

(b) For housing and related facilities for senior adults and persons with disabilities, the Director/Planning Board may approve reductions in the standard parking requirements contained in Section 59-E-3.7. Any reductions granted must be in accordance with the following parking credit schedule, which must be applied sequentially, with succeeding percentages applying to the balance:

(1)	Located within 1,000 feet of Metrorail station entrance:	5%
(2)	Provision of private shuttle bus service for a minimum of 7 years, with a schedule assured by: <u>1) a special exception granted in accordance with Section 59-G-2.35 or 59-G-2.35.1[,]; or 2) a condition of site plan approval.</u> [enforcement agreement in accordance with Section 59-D-3.3 or other long-term agreement.] Continued shuttle bus service after that period is subject to the parking needs of the specific project, as determined by the Board of Appeals, Planning Board or Director:	10%
(3)	Provision of units that are required to be at or below the	

	price levels for moderately priced dwelling units specified in accordance with Chapter 25A of this Code:	Up to 20% ¹
(4)	Facilities or programs for assisted living, including a dining facility large enough to serve meals to at least 50 percent of the residents, that are assured by a special exception granted in accordance with Section 59-G-2.35 or 59-G-2.35.1 or by a similar long-term agreement:	20%

1 The percentage reduction must be no greater than the percentage of price-controlled dwelling units in the facility.

* * *

Sec. 4. DIVISION 59-F-10 is amended as follows:

DIVISION 59-F-10. AUTHORITY.

* * *

59-F-10.2. Sign Review Board.

* * *

(b) Powers and Duties.

(1) Duties. The Sign Review Board must:

* * *

(G) Notification

1. Verify that an applicant for a sign variance has:

a. Submitted to the Director with the application for a variance a list of all those to be notified of the hearing. The list must include:

* * *

iv. The technical staff of [t] The Maryland-National Capital Park and Planning

(16)

Commission, if the sign is to be located on
the property [under a Section 59-D-3 site
plan agreement]; and

* * *

Sec. 5. Effective date. This ordinance becomes effective 20 days after the
date of Council adoption.

This is a correct copy of Council action.

Mary A. Edgar, CMC

Clerk of the Council



The Maryland-National Capital Park & Planning Commission 8787 Georgia Avenue, Silver Spring, Maryland 20910-3760
(301) 495-4595, Fax (301) 495-1306

Project Name: _____ Date: _____
Reviewer's Name: _____ Site Plan No: 8- _____
Applicant and Attorney: _____ Phone No.: _____

DEPARTMENT

INITIAL

DATE

SITE PLAN and SIGNATURE SET RELEASE ROUTING SHEET

Development Review

OPINION

1. Planning Board Hearing - Conditions verified by Staff and applicant.
2. Opinion prepared and mailed.

Organization _____

SITE PLAN and LANDSCAPE and LIGHTING PLAN

1. Distribute Site Plan Signature Set as submitted by Applicant to Appropriate Departments
 - A. Development Review
Site Plan/Landscape and Lighting Plan in accordance with Planning Board approval and in compliance with all conditions:
 - B. Environmental Planning
 - a. Forest Conservation Plan
 - b. Conservation Easements
 - c. Forest Conservation Maintenance and Management Agreement
 - C. Transportation Planning
 - a. Transportation Management Agreement (attached and technically sufficient)
 - Other (List) _____
 - D. Development Program reviewed by Planning Technician
3. Development Review procedures complete:

Forward to Legal:
Received: _____

Legal

1. Conservation Easement documents:
2. Legal Department procedures complete:

Development Review Division Chief

Received: _____

- a. Copies signed by Chairman or Designee:
- b. Forward to Development Review:

Development Review

1. Notify applicant that Site Plan, agreement(s) and attachments are ready for pick up.
2. Copy of Site Plan forwarded to Development Review with building permit application:
3. Signature Set package procedures complete